

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1423

Introduced by Assembly Member Tom Berryhill

February 27, 2009

An act to amend ~~Section~~ *Sections 1571, 1572, 1573, 1574, 2009, and 3240.5* of, and to repeal and add Sections 3241 and 3242 of, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 1423, as amended, Tom Berryhill. Commercial hunting ~~clubs~~. *clubs: Shared Habitat Alliance for Recreational Enhancement program: interference with hunting.*

Existing

(1) *Existing* law establishes the Department of Fish and Game in the Natural Resources Agency. Existing law authorizes the department to regulate commercial hunting clubs. Existing law requires a person in possession or control of property who imposes or collects a fee for the privilege of taking birds or mammals on that property, or who imposes or collects a fee for any type of entry or use permit that includes the privilege of taking birds or mammals on that property, to obtain a commercial hunting club license from the department, as prescribed. Existing law requires that license to be issued to any person upon submission of a completed application on a form approved by the Fish and Game Commission and the payment of a fee, as specified. Existing law exempts from the application of ~~these~~ *those* provisions any hunting club or program licensed under other provisions of the Fish and Game Code and any person who receives less than \$50 per entrant to the club and an annual total of fees that is less than \$500.

This bill would recast those provisions to establish a number of exemptions from ~~having the requirement~~ to obtain a commercial hunting club license. The bill would require an application for a commercial hunting club license to be on a form furnished by the department. The bill would require the application to contain prescribed information. The bill would ~~require~~ *authorize* the department to issue a license to any person upon submission of a completed application and payment of a fee, in accordance with a fee schedule based on the number of properties used by the club.

(2) Existing law requires the Department of Fish and Game to establish the Shared Habitat Alliance for Recreational Enhancement program to encourage private landowners to voluntarily make their land available to the public for wildlife-dependent recreational activities, as defined. Existing law establishes the SHARE Account in the Fish and Game Preservation Fund to be used for specified purposes relating to wildlife conservation.

This bill, among other changes, would require the department to adopt regulations for the management and control of wildlife-dependent recreational activities on land that is subject to the program, to report to the Fish and Game Commission annually on the status of the program, and to maintain data on the types of wildlife-dependent recreational activities preferred by users of the program. The department would be authorized to establish and impose user fees, use existing hunting and fishing license stamp or tag fees from the Fish and Game Preservation Fund, or apply for grants, federal funds, or other contributions from other sources. Money generated pursuant to this authorization would be deposited into the SHARE Account and would, upon appropriation by the Legislature, be available for expenditure by the department to fund the program.

(3) Existing law prohibits a person from willfully interfering with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place.

This bill would include in that list of actions field trials and related hunting dog training. The bill would make a violation of the prohibition above a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1571 of the Fish and Game Code is*
2 *amended to read:*

3 1571. For purposes of this article, the following definitions
4 apply:

5 (a) “Agreement” includes, but is not limited to, a contract,
6 license, easement, memorandum of understanding, or lease.

7 (b) “Partnership” means a collaborative effort involving financial
8 or in-kind contributions by nongovernmental organizations, the
9 department, and other interested parties working in concert to
10 effect *achieve* the goals of the program.

11 (c) “Private landowner” means an owner of any possessory
12 interest in real property that is suitable for use for
13 wildlife-dependent recreational activities.

14 (d) “Program” means the SHARE program established under
15 this article.

16 (e) “Wildlife-dependent recreational activities” means hunting,
17 fishing, wildlife observation, conservation education, and related
18 outdoor activities.

19 *SEC. 2. Section 1572 of the Fish and Game Code is amended*
20 *to read:*

21 1572. (a) The department, in partnership with nonprofit
22 conservation groups and other interested nongovernmental
23 organizations that seek to increase and enhance wildlife-dependent
24 recreational opportunities, shall work cooperatively to plan ~~and~~,
25 develop, *and implement* a program to facilitate public access to
26 private lands for wildlife-dependent recreational activities.

27 ~~(b) (1) Once the terms of the program have been established~~
28 ~~and approved by the partnership, the commission shall verify that~~
29 ~~sufficient demonstration of private landowner and program~~
30 ~~participant interest has been shown to support the program.~~

~~(2) The department may impose user fees or apply for grants, federal funds, or other contributions from nonstate sources to fund the program.~~

~~(3) The Department of Finance shall verify that sufficient funds exist in the SHARE Account to start the program. Upon that verification, in order to facilitate the implementation of the program, the commission shall adopt regulations and fees, in addition to those established in Section 3031, for the management and control of wildlife-dependent recreational activities on land that is subject to this article.~~

~~(b) The department shall adopt regulations for the management and control of wildlife-dependent recreational activities on land that is subject to the program. The department shall report to the commission annually on the status of the program and maintain data on the types of wildlife-dependent recreational activities preferred by users of the program.~~

~~(c) (1) The SHARE Account is hereby established in the Fish and Game Preservation Fund. Money deposited in the account from the sources cited in this subdivision (d) shall only be used for the purposes set forth in this article and to repay the General Fund or the Fish and Game Preservation Fund, as appropriate, for any expenses incurred by the department, commission, or the Department of Finance in establishing the program.~~

~~(d) No General Fund moneys shall be used for the program. Funds may also be used for wildlife conservation purposes on lands subject to an agreement under the program. No moneys shall be available for the program unless the Legislature appropriates moneys to the department therefor.~~

~~(e) The department shall maintain data on the types of wildlife-dependent recreational activities preferred by users.~~

~~(2) Consistent with existing law, the department may establish and impose user fees, use existing hunting and fishing license stamp or tag fees from the Fish and Game Preservation Fund, or apply for grants, federal funds, or other contributions from other sources to fund the program.~~

~~(3) All funding generated pursuant to paragraph (2) shall be deposited in the SHARE Account in the Fish and Game Preservation Fund. The moneys in the account, upon appropriation by the Legislature, shall be available for expenditure by the department solely for programs and projects to benefit the program~~

1 *and for the direct costs and administrative overhead incurred*
 2 *solely in carrying out the department's program activities. Funds*
 3 *may also be used for wildlife conservation purposes on lands*
 4 *subject to an agreement under the program. Administrative*
 5 *overhead shall be limited to the reasonable costs associated with*
 6 *the direct administration of the program. The department shall*
 7 *maintain internal accountability necessary to ensure that all*
 8 *restrictions on the expenditure of these funds are met.*

9 *(d) The department may make grants or enter into contracts*
 10 *with nonprofit organizations for the use of these funds when it*
 11 *finds that the contracts are necessary for carrying out the purposes*
 12 *of this article.*

13 *(e) The program is not subject to Part 2 (commencing with*
 14 *Section 10100) of Division 2 of the Public Contract Code, or*
 15 *Article 6 (commencing with Section 999) of Chapter 6 of Division*
 16 *4 of the Military and Veterans Code. With the approval of the*
 17 *entity in control of property affected by the program, the*
 18 *department may make grants to, or enter into contracts with,*
 19 *nonprofit organizations to accomplish the goals of the program,*
 20 *or the department may reimburse the controlling entity for its costs*
 21 *related to the implementation of the program.*

22 *SEC. 3. Section 1573 of the Fish and Game Code is amended*
 23 *to read:*

24 1573. (a) (1) The department may enter into a voluntary
 25 agreement with a private landowner, including an agreement under
 26 which the private landowner is compensated by the department
 27 for public use of the land, to provide public access for
 28 wildlife-dependent recreational activities. Any financial
 29 compensation offered to a private landowner pursuant to this
 30 paragraph shall not exceed thirty dollars (\$30) per acre, and shall
 31 be commensurate with the quality of the wildlife-dependent
 32 recreational opportunities that are to be provided on the property.

33 (2) The department also may enter into a voluntary agreement
 34 with a private landowner to facilitate access to adjacent public
 35 ~~land~~ *lands or waters*, upon approval of the governmental entity
 36 that holds title to the land. This article does not authorize a private
 37 landowner to exclude persons not participating in the SHARE
 38 program from using public land for wildlife-dependent *recreational*
 39 *activities.*

1 (3) *The department may enter into a voluntary agreement with*
2 *a governmental entity to provide wildlife-dependent recreational*
3 *opportunities to the public on public lands or waters.*

4 (b) Notwithstanding any other provision of law, the department
5 shall keep confidential and not release to the public any personal
6 identifying information received from a private landowner
7 participating in the program, unless the director determines that
8 release of that information is necessary for the administration of
9 the program.

10 (c) Either the department or a private landowner may, in writing,
11 modify or cancel an agreement executed under the program, at
12 any time. Upon cancellation or modification of the agreement by
13 either party, the other party shall be reimbursed for any lost
14 revenues or expenses incurred pursuant to the terms of the original
15 agreement.

16 (d) In addition to any other protection or remedy under law, the
17 protections and remedies afforded to an owner of an estate or any
18 other interest in real property under Section 846 of the Civil Code
19 shall apply to a private landowner participating in the program.

20 (e) The department shall require every person who wants to use
21 land that is subject to an agreement pursuant to subdivision (a),
22 prior to using that land, to sign a waiver that releases the
23 department or any private group, governmental entity, or other
24 organization involved in administering the program, and the private
25 landowner, from liability for any injury or damage that arises from,
26 or is connected with that person's use of the land. Upon request,
27 the department shall provide a copy of the waiver to any of the
28 parties to the waiver.

29 (f) ~~Every~~ An agreement executed pursuant to the program shall
30 ~~prohibit not authorize~~ the take of nongame species by public
31 participants in the program. An agreement may not authorize a
32 private landowner to transfer a hunting or fishing license, stamp,
33 or tag to another person, unless otherwise authorized by law.

34 (g) In determining which lands may be included in the program,
35 the department shall give priority to those lands with the greatest
36 wildlife habitat value. ~~The~~ *To the extent possible, the* department
37 shall also include in the program private lands ~~on which hunting~~
38 ~~is not allowed~~ *that permit multiple wildlife-dependent recreational*
39 *activities*, in order to take into consideration the participation of
40 the ~~non~~ *general* public in the program.

1 SEC. 4. Section 1574 of the Fish and Game Code is amended
2 to read:

3 1574. (a) The department may revoke, for up to three years,
4 the public access privilege granted pursuant to this article, of any
5 person who violates any ~~law provision of this code~~ or regulation
6 ~~adopted pursuant to this code~~ while on any property that is subject
7 to an agreement under the program.

8 (b) The department shall enforce all applicable regulations
9 established by the commission on property that is subject to an
10 agreement executed under the program.

11 SEC. 5. Section 2009 of the Fish and Game Code is amended
12 to read:

13 2009. (a) A person shall not willfully interfere with the
14 participation of any individual in the lawful activity of shooting,
15 hunting, fishing, falconry, *field trials and related hunting dog*
16 *training*, or trapping at the location where that activity is taking
17 place.

18 (b) A violation of this section is ~~an infraction punishable by a~~
19 ~~fine of not less than one hundred dollars (\$100) nor more than five~~
20 ~~hundred dollars (\$500) pursuant to Section 12000.~~

21 ~~(c) If any person is convicted of a violation of this section and~~
22 ~~the offense occurred within two years of another separate violation~~
23 ~~of this section which resulted in a conviction, the violation is a~~
24 ~~misdemeanor punishable by a fine of not less than one hundred~~
25 ~~dollars (\$100) nor more than one thousand dollars (\$1,000), by~~
26 ~~imprisonment in the county jail for not more than one year, or by~~
27 ~~both that fine and imprisonment.~~

28 ~~(d)~~

29 (c) This section does not apply to the actions of any peace officer
30 or personnel of the department in the performance of their official
31 duties. This section does not obstruct the rights and normal
32 activities of landowners or tenants, including, but not limited to,
33 farming, ranching, and limiting unlawful trespass.

34 ~~(e)~~

35 (d) In order to be liable for a violation of this section, the person
36 is required to have had the specific intent to interfere with the
37 participation of an individual who was engaged in *lawful* shooting,
38 hunting, fishing, falconry, *field trials and related hunting dog*
39 *training*, or trapping.

40 ~~(f)~~

(e) For purposes of this section, “interfere with” means any action which physically impedes, hinders, or obstructs the lawful pursuit of any of the above-mentioned activities, including, but not limited to, ~~actions all of the following:~~

(1) *Actions taken for the purpose of frightening away animals from the location where the lawful activity is taking place.*

(2) *Placing or maintaining signs, gates, locks, or barricades that prohibit or deny access to lands without authorization from the landowner or lessee or an authorized designee of the landowner or lessee.*

(3) *Placing food on lands not belonging to the person placing the food for purposes of eliminating the lawful ability to hunt due to the presence of bait, as defined in this code or regulations adopted pursuant to this code.*

SECTION 1.

SEC. 6. Section 3240.5 of the Fish and Game Code is amended to read:

3240.5. (a) ~~As used in this article, “property” means a number of contiguous legal parcels held by an owner or a combination of owners and held out for a common purpose.~~

(b) A person, including, but not limited to, a renter or lessee, in possession or control of property on or with respect to which a fee for the privilege of taking birds or mammals is imposed or collected, or on or with respect to which a fee for any type of entry or use permit that includes the privilege of taking birds or mammals on the property is imposed or collected, is maintaining a commercial hunting club if birds or mammals are taken on the property, and shall procure a “commercial hunting club license” before birds or mammals are taken.

~~(b) This article does not apply to any of the following:~~

~~(1) Any landowner who rents or leases his or her property to a hunting club that is licensed in accordance with this article and is not involved in the operation of the club.~~

~~(2) Any property otherwise enrolled in a hunting or conservation-related program licensed or authorized under this code or regulations adopted pursuant to this code.~~

~~(3) Any officially sanctioned field dog trial event held pursuant to regulations adopted by the department.~~

~~(4) Any property under a state or federal conservation or agricultural easement.~~

~~(5) Any hunting club that, or person who, receives less than two hundred dollars (\$200) per entrant, and less than a total of two thousand dollars (\$2,000) between July 1 and the following June 30 for permission, entry access, or use fees that include the privilege of hunting on property in the possession or control of that hunting club or person.~~

~~(e) As used in this article, “property” means one or more contiguous or adjacent legal parcels held by a common owner or combination of owners and held out for a common purpose.~~

(c) This article does not apply if the property meets any of the following conditions:

(1) The landowner, or the renter or lessee, of the property receives less than one hundred dollars (\$100) per entrant and receives less than a total of one thousand dollars (\$1,000) between July 1 and the following June 30 for permission, entry access, or use fees that include the privilege of hunting on the property in his or her possession or control. The department may adjust the threshold amounts established in this paragraph pursuant to Section 713.

(2) The property is used by a hunting club or program licensed under regulations adopted pursuant to this code.

(3) The property is used for an officially sanctioned field dog trial event pursuant to regulations adopted pursuant to this code.

(4) The property is used in conjunction with the Shared Habitat Alliance for Recreational Enhancement (SHARE) program under Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.

(5) A domesticated game bird hunting club licensed under Article 3 (commencing with Section 3270) operates on the property.

(6) A domesticated migratory game bird shooting area licensed under Article 4 (commencing with Section 3300) operates on the property.

(7) The property is used in conjunction with the private wildlife habitat enhancement and management program under Article 5 (commencing with Section 3400).

(8) The property subject to a recorded state, federal, or nonprofit wildlife conservation or agricultural easement or any property enrolled in a habitat protection or enhancement program under this code, including, but not limited to, Article 7 (commencing with Section 3460).

1 (d) *This article does not apply to a landowner who rents or*
2 *leases his or her property to the commercial hunting club and is*
3 *not involved in the operation of the club, if the club is licensed in*
4 *accordance with this article.*

5 ~~SEC. 2.~~

6 SEC. 7. Section 3241 of the Fish and Game Code is repealed.

7 ~~SEC. 3.~~

8 SEC. 8. Section 3241 is added to the Fish and Game Code, to
9 read:

10 3241. (a) An application for a commercial hunting club license
11 shall be submitted on a form furnished by the department. The
12 application, which shall set forth all of the exemptions and
13 conditions established in Section 3240.5, shall require the applicant
14 to include all of the following information:

15 (1) The name of the club and the ownership.

16 (2) The business telephone number and mailing address of the
17 club.

18 (3) The number of properties used by the club and the ~~general~~
19 physical location of each property.

20 (4) The total acreage of the club property.

21 (5) A list of all species of game hunted on the club property.

22 (6) Information as to whether the club owner owns any of the
23 properties used by the club.

24 (7) The name and address of each property owner, if the property
25 owner is substantially involved in the operation of the club, but
26 does not own the club.

27 (8) The signature and title of the applicant.

28 (9) Any other information the department may require.

29 (b) The department shall allow a commercial hunting club that
30 leases or rents more than one property for hunting purposes to
31 submit a single application listing each of the properties for which
32 the club is seeking a license, if all of the information required for
33 each property is submitted in a format approved by the department.

34 ~~SEC. 4.~~

35 SEC. 9. Section 3242 of the Fish and Game Code is repealed.

36 ~~SEC. 5.~~

37 SEC. 10. Section 3242 is added to the Fish and Game Code,
38 to read:

39 3242. (a) The department ~~shall~~ *may* issue a commercial hunting
40 club license to any person upon submission of a completed

1 application and payment of the required fee, according to the
2 number of properties used by the club, as follows:

3 (1) The fee for one property shall be two hundred dollars (\$200).

4 (2) The fee for two to five properties shall be five hundred
5 dollars (\$500).

6 (3) The fee for six to 10 properties shall be one thousand dollars
7 (\$1,000).

8 (4) The fee for 11 or more properties shall be two thousand
9 dollars (\$2,000).

10 (b) The fees specified in this section are applicable to the 2010
11 license year, and shall be adjusted annually thereafter pursuant to
12 Section 713.

13 *SEC. 11. No reimbursement is required by this act pursuant*
14 *to Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*